

COUNTY OF CONTRA COSTA

DEPARTMENT NUMBER 23

Respondent..

1 WEDNESDAY, DECEMBER 13, 2011, MARTINEZ, CALIFORNIA, 9:00 A.M.

2 CARL MARINO,

3 called as a witness for the Petitioner, having been duly sworn,
4 testified as follows:

5 **THE WITNESS:** I do.

6 **THE CLERK:** Please be seated.

7 Could you state your first and last name and then spell
8 them both for the record.

9 **THE WITNESS:** It's Carl Marino; C-A-R-L, M-A-R-I-N-O.

10 **THE CLERK:** Thank you.

11 **DIRECT EXAMINATION**

12 **MR. LANGLEY: Q.** Mr. Marino, what is your occupation?

13 **A.** I am an actor.

14 **Q-** And were you formerly a police officer?

15 **A.** I was a deputy sheriff in Monroe County in upstate New
16 York.

17 **Q.** How long have you been working as an actor?

18 **A.** Just about three years.

19 **Q.** And did you at one time work for a detective agency,
20 Butler & Associates?

21 **A.** Yes, I did.

22 **Q.** When did you start working for --

23 **THE COURT:** Excuse me for just a minute. Your stint in
24 New York as a deputy sheriff lasted from when to when?

25 **THE WITNESS:** From 1991 until 2008.

26 **THE COURT:** Okay. Go ahead.

27 **MR. LANGLEY: Q.** And did you start acting after that?

28 **A.** When I moved out to California I did.

1 Q- And you've not worked as a police officer since 2008?

2 A. No, I have not.

3 Q. After leaving law enforcement, did you go to work for the
4 detective agency Butler & Associates?

5 A. Yes, I did.

6 Q. And when did you start working for Butler & Associates?

7 A. It would have been in January of 2009.

8 Q- And how did you happen to find employment there?

9 A. I answered an ad on Craigslist that Mr. Butler had put
10 on. It was looking for decoys that had former law enforcement
11 experience and possible acting experience.

12 Q. When did you begin working there?

13 A. In January of 2009.

14 Q. 2009. And what were you hired to do?

15 A. I went in and applied for a decoy position, but I was
16 actually hired as an investigator.

17 Q. What type of work were you initially doing for Butler &
18 Associates?

19 A. It was all type of investigative work, normal private
20 investigation work, infidelity cases, surveillance cases, things
21 of that nature.

22 Q. Where was Butler & Associates' office when you became
23 employed?

24 A. 1000 Detroit Avenue in Concord.

25 Q. Were you actually on the payroll? Were you a paid
26 employee?

27 A. More of a contractual employee. We'd only get paid when
28 we worked on certain cases.

1 Q. So were you paid by the hour .
2 A. Yes.
3 Q- when you worked?
4 Now, in the course of your employment with Butler &
5 Associates, did you meet a woman who identified herself as
6 Suzanne Porter?
7 A. Yes, I did.
8 Q. Do you see Ms. Porter in the courtroom?
9 A. Yes, I do.
10 Q. Can you point her out, please.
11 A. Right there.
12 MR. LANGLEY: Indicating the respondent for the record.
13 THE COURT: The record shall so reflect.
14 MR. LANGLEY: Q. When did you first meet her?
15 A. It was in the first week of November, I believe, in 2010..
16 Q- Where did you meet her?
17 A. I met her at Butler & Associates, at the office in
18 Concord.
19 Q- Did someone explain to you the purpose for which she was
20 there?
21 A. I was told by Chris Butler that we had a client coming
22 in. And that was pretty much all I was told until she actually
23 was there.
24 Q. So sometime early November 2010?
25 A. Yes.
26 Q- Did someone else accompany her to Butler's office?
27 A. Someone that she said was her father was there with her..
28 Q. And could you describe him.

1 A. He was an older gentleman. I don't remember exactly what
2 he looked like.

3 Q. Okay. Who was at the meeting that took place with
4 Ms. Porter?

5 A. It was Ms. Porter, her father, myself, and Chris Butler.
6 And there possibly were some other interns that worked in the
7 office that were also at the meeting, but I'm not positive. It
8 was just general policy, if they were in the office, they would
9 have sat in on the client meeting.

10 Q. And what do these interns do?

11 A. They worked for Chris, but they were basically trying to
12 become investigators. Mostly they just did a lot of running
13 around and paperwork and stuff.

14 Q. Were they males or females?

15 A. They are females.

16 Q- Did you

17 **THE COURT:** Was Mr. Butler a licensed investigator?

18 **THE WITNESS:** As far as I know he was, yes.

19 **THE COURT:** Did you ever hear from him or receive any
20 sort of information when you were hired about any ethical rules
21 or rules that were in the Business and Professions Code about
22 limitations on what a private investigator could do in terms of
23 deceiving other people?

24 **THE WITNESS:** I was never made aware of that.

25 **THE COURT:** So you had no discussions about any
26 limitations that might be placed on your work as a decoy working
27 for a private investigator?

28 **THE WITNESS:** No, sir.

1 **THE COURT:** Okay. Go ahead.

2 **MR. LANGLEY:** Q. Had you ever worked as a private
3 investigator for any other individual before going to work for
4 Butler?

5 **A.** Not before going to work for him; no, I did not.

6 **Q-** Did you learn from Ms. Porter how she found Butler &
7 Associates?

8 **A.** That I wasn't told. She obviously had a phone
9 conversation with Chris Butler before the client meeting, and I
10 was never told or never knew how she came across Butler &
11 Associates.

12 **Q.** And when you were there with her and the gentleman who
13 she identified as her father, what did she say about what she
14 wanted you to do?

15 **A.** She was interested in having her ex-husband arrested for
16 DUI.

17 **Q.** And did she explain why she wanted this to happen?

18 **A.** She was very adamant at the meeting that - no. She was
19 very, I guess the best word is, hostile toward her ex-husband.
20 She made it clear to us that he would drink and drive with the
21 kids in the car quite frequently, and she wanted it put to an
22 end. It came across that she had a very strong dislike for him.

23 **Q-** Do you remember other things in particular that she said?

24 **A.** I don't remember the specifics of what she said. I just
25 remember her being very adamant and doing most of the talking at
26 the meeting.

27 **Q-** Did she say how she found out about Baker and Associates?

28 **A.** Butler.

1 Q. Excuse me. Butler & Associates?

2 A. No, she didn't.

3 Q- Did she bring any notes to the meeting?

4 A. She didn't bring notes to that meeting, but she brought
5 them to a subsequent meeting later.

6 Q- Did she say anything about court proceedings that were in
7 progress?

8 A. I don't remember her talking about court proceedings.

9 Q- Okay. Did she talk about how many children she and
10 Mr. Aksu had?

11 A. I believe she said they had one child together.

12 Q. What else do you recall being discussed at that meeting?

13 A. Just the way in which to go about the actual execution of
14 the plan to have him arrested for a DUI.

15 Q- What was the plan that was concocted there?

16 A. Initially, Chris Butler said to her that normally he
17 would send in decoys which are younger, attractive women to
18 interact with the person and try to get them to go to a bar or
19 restaurant and have drinks that way.

20 She told us that wouldn't work in this particular case
21 because he would not fall for that, and we had to think about an
22 alternative way to try to get him into an establishment.

23 Q- And was she engaged in the discussion about how to work
24 this out, you might say?

25 A. Very much so. It was mostly she and Chris Butler doing
26 the talking, going back and forth how it should be done.

27 Q. Did she indicate what her former husband's weaknesses
28 were or ways in which he could be entrapped?

1 A. She told us that the best way to go about it was to go
2 after his ego. She said he was very egotistical; he was very
3 impressed with people with high stature and with expensive
4 things. And that would be the most likely way to be able to
5 talk to him.

6 Q. Based on your discussion, what was the plan that emerged
7 from the meeting?

8 A. The plan that emerged from the meeting was that I, being
9 the actor, was Chris Butler decided that it should be done by
10 me -- would create a fake story that I was a reporter-type
11 person that was doing an article based on the 25 most
12 influential immigrants from the East Bay, and that I was
13 pitching it to Diablo magazine.

14 Q. Did you contact Mr. Aksu?

15 A. I did.

16 Q. When?

17 A. I believe I contacted him that day.

18 Q. And how did you identify yourself?

19 A. I didn't talk to him personally. I think I left voice
20 mails -- on two separate voice mails and told him my name was
21 "John Brownell," which was a name that Chris Butler had assigned
22 to a cell phone, a sting cell phone.

23 Q. Do you recall what Butler & Associates' fee was for this
24 work?

25 A. Normally it was a \$1,500 retainer that they would have to
26 pay that day. We would not take the case on unless there was a
27 retainer paid.

28 Q. Do you remember whether Ms. Porter paid him that day?

1 A. I believe her father actually paid that day is what I
2 remember.

3 Q. In what form?

4 A. From what I remember, he paid cash.

5 Q. Like green stuff?

6 A. Yes.

7 Q. Did Butler give her or her father a receipt?

8 A. The standard procedure, what Chris Butler would do, he
9 would take cash itself, photocopy it, and then would sign "Paid"
10 and the date on the actual photocopy of the money, and give that
11 as a receipt.

12 Q. Now by this time, you had been working for Butler for
13 over a year?

14 A. Yes.

15 Q- And had you engaged in these kinds of activities before?

16 A. I had not personally engaged in them, but there had been
17 some of these type situations that had happened in the past.

18 Q. Now, by this time were you beginning to question in your
19 own mind -- Let me strike that.

20 When you went to work for Butler, did you think you were
21 going to work for a legitimate detective agency?

22 A. I did, and I had no reason to think otherwise. It seemed
23 very legitimate. My first meeting with him seemed that way, his
24 website. The work that was coming into his office was very
25 legitimate.

26 Q. And at some point did you begin to question that?

27 A. There were questions throughout my employment. There
28 were times where things were done that -- well, possibly weren't

1 illegal; just didn't seem above board.

2 Q. After you contacted Mr. Aksu initially, did he call you
3 back?

4 A. He did.

5 Q. Did you talk to him?

6 A. I don't remember exactly when I talked to him. I'd
7 actually started stalling him after the first contact I made.

8 Q- And why was that?

9 A. Before I made the initial contact, I had been brought
10 into drug dealings by Chris Butler and the Commander of the
11 Narcotic Task Force in Contra Costa County, Norm Welsh.

12 Q- And you had a problem with that?

13 A. I had a serious problem with that.

14 Q. Did you go to the authorities?

15 A. I had not yet gone to the authorities, but I was in the
16 process of trying to find out who to go to. Obviously, I could
17 not go to the Narcotics Task Force. And I didn't know who in
18 Contra Costa County I could trust.

19 Q. Is this why you were putting off Mr. Aksu?

20 A. Yes. I was in the process of making contact with
21 authorities.

22 Q. And did you ultimately make contact with authorities?

23 A. I did ultimately make contact with authorities.

24 Q. And who was that?

25 A. The initial process is, it went to a law enforcement
26 officer who contacted a district attorney -- assistant district
27 attorney in Alameda County who contacted the assistant
28 district attorney in Contra Costa County who took it to his

1 lieutenant who ultimately called the Sacramento Department of
2 Justice, and the Department of Justice ultimately got in touch
3 with me.

4 **MR. TULLY:** No objection.

5 **THE COURT:** No objection?

6 **MR. TULLY:** No objection.

7 **THE COURT:** I'm assuming that if you don't object,
8 there's no objection.

9 **MR. TULLY:** I just wanted the record to be clear that I
10 was paying attention, and more specifically that I don't object.

11 **THE COURT:** Well, Mr. Tully, I've had you in other cases.
12 I don't understand, in those cases or now, that you have fallen
13 asleep or otherwise become distracted by a fly on the wall or
14 any other detail like that.

15 **MR. TULLY:** All right. Thank you.

16 **THE COURT:** You're quite alert and always paying
17 attention.

18 Go ahead.

19 **MR. LANGLEY:** Q. When was the next contact that you had
20 with Mr. Aksu, if you remember?

21 **A.** Well, throughout the period where I was stalling, I know
22 that Ms. Porter had called the office several times. And I had
23 spoken with her personally, and she was concerned that we had
24 not acted on what the plan was as far as setting up Mr. Aksu.
25 She had actually come to the office for a second meeting.

26 **Q.** Who was at that meeting?

27 **A.** I don't remember if her father was at that meeting or
28 not. I can't remember. I know it was herself, myself, and

1 Chris Butler. And that's the only people I can remember. I
2 can't remember if her father was at that meeting.

3 Q- And what was the reason for the second meeting?

4 A. Basically because there had been such a long period of
5 time that elapsed since the first meeting we had, and we had not
6 acted -- at least to her satisfaction -- of executing the plan
7 that we had in place. She was concerned that maybe we needed to
8 execute an ultimate plan and wanted to come up with ideas as far
9 as what we should do.

10 Q. Did she give you other ideas?

11 A. There was discussion between herself, myself, and Chris
12 Butler. She made us aware that they exchanged custody at a
13 police station and that might be a possible place where, if we
14 were going to have an arrest made, that would be where it could
15 be done, somehow setting him up beforehand, having him drink, or
16 just even taking a chance that maybe he would show up having
17 already drank.

18 Q. What happened at that point?

19 A. Chris Butler decided that wasn't a good plan. There were
20 too many variables, and obviously it was my opinion that he just
21 did not want it to be that close to a police station with
22 officers that he didn't have previous contact with.

23 Q. So did you have any further meetings with Ms. Porter?

24 A. That was the last one.

25 Q. About when was that?

26 A. It would have been fairly soon before the actual
27 operation itself. And I don't remember the exact date.

28 Q- When did the actually meeting with Mr. Aksu take place?

1 A. That was January 9th, I believe, of 2011.

2 Q. And did you contact him before that meeting?

3 A. I did.

4 Q. All right. And where was that meeting to take place?

5 A. That was to take place at The Vine wine bar in Danville.

6 Q- What was the plan?

7 A. The plan was that I was going to just do an interview.

8 THE COURT: Now, when you say "What was the plan," are
9 you just asking him generally what was his plan or specifically
10 what did he discuss with your client when they arranged to meet?

11 I just want to make sure I understand. You're just
12 talking theoretically about the plan or are we talking about the
13 conversation? He said he contacted your client.

14 MR. LANGLEY: Okay.

15 THE COURT: And was "the plan" something that was
16 discussed on the phone or was "the plan" you're asking about
17 just generically what the plan was?

18 MR. LANGLEY: Well, let me ask another question.

19 THE COURT: It's two different things.

20 MR. LANGLEY: I understand. And thank you for that
21 point.

22 Q- When you talked to Mr. Aksu before the meeting, what did
23 you tell him about what was going to happen?

24 A. I asked him if he'd be willing to meet at the wine bar in
25 Danville to discuss the article that I was trying to put
26 together and if he'd be interested in coming there to do an
27 interview with myself and one other person.

28 Q. And he agreed?

1 A. Yes.

2 Q- And was there a set up that was discussed with Ms. Porter
3 as to what would happen that evening?

4 A. Well, at the second meeting, Chris Butler decided when --
5 he decided that we couldn't go with the new type plan that was
6 being discussed. He told me that he was going to try to give
7 Mr. Aksu a call and try to initiate more contact and find out if
8 they could go with the original plan.

9 When I heard that, obviously I told him I didn't want him
10 to do that. Because if he had contacted Mr. Aksu, he would have
11 realized that Mr. Aksu had in fact gotten in touch with me when
12 I told him that he hadn't.

13 Q- Again you were stalling?

14 A. Yes. And he would have known that I was lying to him.

15 Q. But when you got there that evening, what was supposed to
16 transpire? How was that supposed to play out?

17 A. It was supposed to play out the way we had discussed it
18 in the office, where I was going to -- I would come there with
19 my assistant, who was actually Chris Butler's brother-in-law.
20 He was going to pose as another influential immigrant from the
21 East Bay. And he was just going to be there as someone else who
22 I was -- or I had already interviewed before.

23 And when Mr. Aksu came there, I was just going to do a
24 standard interview. And at that time -- his name was Benny --
25 was going to order flights of wine and was just going to keep
26 ordering these flights as long as the interview went.

27 Q. Mr. Aksu arrives, and you and Benny are there waiting for
28 him?

1 A. We were there waiting for him.

2 Q. And was there a police officer, an actual police officer
3 involved in this?

4 A. Yes, there was.

5 Q. And who was that?

6 A. Steve Tanabe.

7 Q. And who is he?

8 A. He is a friend of Chris Butler's. He was a Contra Costa
9 deputy sheriff who worked in Danville on the weekend as a
10 Danville police officer I believe.

11 Q. And what was his role in this as you understood it?

12 A. He would have been contacted ahead of time by Chris
13 Butler; would have been given the description of the vehicle
14 that Mr. Aksu showed up in. And once our meeting was over with,
15 Chris Butler would contact him. He would be waiting in a place.
16 And as soon as Mr. Aksu drove by, he would pull him over on a
17 DUI stop.

18 Q. How long were you with Mr. Aksu that evening?

19 A. It was quite a while. I would say close to three hours.
20 I'm not exactly sure. But it was definitely a while.

21 Q. And Benny

22 A. Yes.

23 Q. -- ordered the drinks. What are you doing, taking notes?

24 A. I was taking notes.

25 Q. And the interview finishes. What happens then?

26 A. Mr. Aksu left. I sent a text message to Chris Butler,
27 letting him know that our meeting was over. And, from what I
28 was told, he sent a message to Steve Tanabe somehow to let him

1 now.

2 Q. So the last time you saw Mr. Aksu was when he exited the
3 bar?

4 A. No, actually; I saw him during the DUI stop. I drove by
5 because - well, I didn't drive by; my wife drove me by - and I
6 saw the actual DUI stop itself.

7 Q. And where did that occur?

8 A. I'm not sure the exact street it was on, but it wasn't
9 too far from the actual Vine itself. It was on the way to the
10 highway, I know that.

11 Q. The freeway?

12 A. Yes.

13 Q- Now did Butler video any of this?

14 A. He did. He videotaped the actual stop itself. When I
15 drove by, I did see his Hummer parked across the street. And he
16 later told me he videotaped the actual stop itself.

17 Q. Now by the time this all occurred, had you already been
18 contacted by the Department of Justice?

19 A. I had not been in contact with the Department of Justice
20 yet, but the actual process had been initiated.

21 Q. After this you did get contacted by the Department of
22 Justice?

23 A. Yes.

24 Q. And have they given you immunity?

25 A. Yes.

26 Q. Has that been signed by a judge?

27 A. Not that I know of. I'm the one who brought it to their
28 attention of these "Dirty DUI"s."

1 **MR. LANGLEY:** Thank you. Oh, I'm sorry. Excuse me..
2 Excuse me. I want to show what's been marked as Exhibit 11..
3 Here's a copy, Your Honor. It's a new exhibit..

4 **THE COURT:** Does Mr. Tully have one?

5 **MR. TULLY:** Yes, I have seen a copy. Yes..

6 **MR. LANGLEY:** This is an email, dated November 8th --

7 **MR. TULLY:** Objection. I just ask that counsel lay a
8 foundation for this email..

9 **MR. LANGLEY:** I'm just identifying it..

10 **THE COURT:** All right. What's your offer of proof,
11 Mr. Langley, as to whether or not you will be able to lay the
12 foundation; and if so, what will the foundation be?

13 **MR. LANGLEY:** This is an email from Ms. Porter..

14 **THE COURT:** Well, I understand that. But that doesn't
15 tell me enough to tell me if you have sufficient evidence to
16 show a foundation for this..

17 **MR. LANGLEY:** Let me ask a couple more questions then..

18 **THE COURT:** Okay..

19 **MR. LANGLEY:** Q. When is the first time you saw this?

20 **A.** That would have been on November 8, 2010..

21 **Q.** And who gave it to you?

22 **A.** Chris Butler forwarded an email to me..

23 **Q-** Forwarded to you?

24 **A.** Yes..

25 **Q-** Do you know where it originally came from?

26 **A.** It came from Ms. Porter..

27 **Q.** How do know that?

28 **A.** He told me that he was sending me an email that had been

1 sent to him by Ms. Porter.

2 Q- Did you talk to Ms. Porter about that?

3 A. No. I don't believe I ever talked to her about this
4 email.

5 MR. TULLY: At this point I'll object as to foundation..

6 THE COURT: All right. Well, he hasn't offered it into
7 evidence. So unless it's offered.

8 MR. TULLY: Okay.

9 MR. LANGLEY: Q. Let me ask you this: Did Ms. Porter
10 provide you, personally, a description of her former husband?

11 A. Yes, she did.

12 Q. Was that at the first meeting or the second meeting?

13 A. The first meeting was a general description that she told
14 me about him. The second meeting there was a sheet of paper
15 that was given that had already been -- had all the information
16 written on it.

17 Q- That she had?

18 A. It was given to me by her and her father. I'm not sure
19 who had actually written the actual

20 Q. Okay. That is this or that is not this?

21 A. No, it's separate.

22 Q- But there was another sheet of paper given to you at a
23 second meeting which stated what exactly?

24 A. It had the general description of him, the type of
25 vehicles that he drove, the license plate numbers. There was a
26 suggestion we use the Vine in Danville. It was a place that he
27 would probably like.

28 Q. Uh-huh.

1 A. It was very well, similar to that actual email. It
2 was a lot of the same information. It was told that I shouldn't
3 use the name "Carl" because her husband at the time was also
4 named Carl, and that might confuse him or make him suspicious.

5 Q. And this was something that was given to you at the
6 second meeting by Ms. Porter?

7 A. Yes.

8 Q- Did she indicate to you what her former husband likes to
9 drink?

10 A. Yes, she did. Besides wine, he liked this very strong
11 Turkish drink. And I can't remember the name of it. But if
12 they did have that at that bar, that would be something that we
13 should order because he did like to drink that. Or if possible
14 if Benny could actually bring that and somehow let the bar --
15 let them pour it.

16 Q- And do you recall specifically what Benny was ordering at
17 the bar?

18 A. It was a wine bar so he was ordering flights of wine. By
19 the time the night was over, he had ordered several flights.

20 Q- Are those like carafes?

21 A. Basically, it's three different glasses of wine of
22 different types.

23 MR. LANGLEY: Thank you.

24 THE COURT: Cross-examine.

25 MR. TULLY: Thank you.

26 CROSS-EXAMINATION

27 MR. TULLY: Q. Good afternoon, sir.

28 A. Hi.

1 Q. Do you know if Mr. Butler was a licensed investigator or
2 you don't or...?

3 A. As far as I know he was. He did have a private
4 investigator's license number.

5 Q. Okay. Were you aware of any of his advertisements on TV
6 or anywhere did he advertise for his business?

7 A. Not that -- I never saw an advertisement. But he did at
8 some point say he advertised in the Yellow Pages, but I never
9 saw it.

10 Q. Okay. And then in terms of him being on TV, he made a
11 little bit of the TV circuit?

12 A. Yes.

13 Q- Okay. He was on a few different TV shows?

14 A. He was featured on several different pieces on different
15 networks, yes.

16 Q. Do you remember what shows he appeared on?

17 THE COURT: Just so we understand what we're talking
18 about here, I assume this was all before Mr. Butler became a
19 public figure as a result of this investigation. You're asking
20 about what was the nature of his business and his advertising
21 and whatnot --

22 MR. TULLY: Yes.

23 THE COURT: -- at or about the time that he became an
24 employee?

25 MR. TULLY: Exactly. Yes. Thank you.

26 THE COURT: All right. I'm sure most people have heard
27 something about Mr. Butler since January of

28 MR. TULLY: Yes.

1 Q. So prior to January he had been making the rounds on TV
2 shows?
3 A. Yes, he had.
4 Q- And some pretty famous TV shows?
5 A. Yes.
6 Q- Such as?
7 A. There was a piece on Dr. Phil; I believe the Today Show
8 did a piece on him; some local networks have done some things.
9 Q. And these pieces portrayed him to be just maybe - They
10 didn't portray him in a shady light; it was more in a positive
11 light; right?
12 A. Yes.
13 Q. So for Ms. Porter the main thrust was that he drinks and
14 drives with the kids regularly, and she wanted to put this to an
15 end?
16 A. That was something that was mentioned, yes.
17 Q. Okay. And now in terms of when you were present at that
18 meeting, did either you or Mr. Butler present what you were
19 doing, in terms of these sting DUI's, as something illegal?
20 A. No.
21 Q. Did you specifically represent it as something that was
22 legal?
23 A. I'm not exactly sure how Mr. Butler presented it. I'm
24 not sure if I understand the question.
25 Q. At any meeting that you were present with Ms. Porter, did
26 you ever say anything or imply anything such that Ms. Porter
27 would get the impression that what you were doing was illegal?
28 A. I don't think it was implied either way.

1 Q. So did she ask you if what you were doing was illegal?
2 A. Not that I remember.
3 Q- Okay. If she would have asked you, would you have said
4 yes or no? Would you have left it ambiguous?
5 MR. LANGLEY: Objection. The question is
6 THE COURT: Sustained. You're asking him to speculate.
7 MR. TULLY: Q. Now in terms of the actual sting
8 operation on Mr. Aksu, did you conspire to aid and abet a DUI
9 that evening?
10 MR. LANGLEY: Objection, it's argumentative.
11 THE COURT: Well, it's asking him his legal opinion.
12 Sustained.
13 MR. LANGLEY: Okay.
14 MR. TULLY: Okay.
15 Q. Who purchased the drinks that evening?
16 A. They were purchased by Chris Butler through Benny..
17 Q. Was it a condition of the meeting that Mr. Aksu have
18 anything to drink?
19 A. No.
20 Q- Okay. Did you force him to drink in any way?
21 A. No.
22 Q. Did you encourage him to drink that evening?
23 A. Drinks were purchased for him.
24 Q. Did you say "Hey, have another drink" or anything of that
25 nature?
26 A. Not specifically that way, no..
27 Q- Was it always his choice to drink or not drink at this
28 meeting?

1 A. Yes.

2 Q. So the drinks were laid out kind of in front of him, and

3 he could choose to partake or not partake?

4 A. Yes.

5 Q- How long did this meeting last?

6 A. Like I said before, I think close to three hours, but I'm

7 not exactly sure.

8 Q- Okay. Do you recall how many drinks Mr. Aksu had during

9 that time?

10 A. I don't remember exactly. I know several flights of wine

11 were ordered and consumed, but I'm not sure the exact number.

12 Q. Well, let's --

13 A. It was a constant.

14 Q. Okay. When you said "several," okay, would it be between

15 3 to 5, 4 to 7, 10 to 15? Can you give an estimate?

16 A. I would say 4 to 5.

17 Q. 4 to 5 glasses?

18 A. 4 to 5 flights. A flight isn't a full glass, obviously.

19 They are 3 --

20 THE COURT: I've actually done this once. I'm not

21 totally inexperienced. They bring out three smaller. If

22 you're drinking coffee, it would be like a smaller glass. And

23 there's a sampling of three different wines; right?

24 THE WITNESS: Yes, sir.

25 THE COURT: And are you saying that each of the parties

26 there had a three-glass flight of wine in front of them for at

27 least some good part of the evening?

28 THE WITNESS: Yes, Your Honor.

1 **THE COURT:** So that what Mr. Aksu would have in front of
2 him would be -- perhaps on a cute little tray -- 3 little small
3 glasses of wine that give you different types of flavorings or
4 tastes --

5 **THE WITNESS:** Yes, sir.

6 **THE COURT:** -- or different kinds of wine; right?

7 **THE WITNESS:** Yes. They were full-size glasses, but
8 just --

9 **THE COURT:** With small tastes in them?

10 **THE WITNESS:** Yes, sir.

11 **THE COURT:** So I take it when Mr. Aksu finished one
12 flight, out came the next flight?

13 **THE WITNESS:** Yes, sir.

14 **THE COURT:** Was he drinking rapidly or slowly?

15 **THE WITNESS:** I'd said in between. It wasn't -- he
16 wasn't drinking rapidly, and I don't believe he was drinking
17 slowly either.

18 **THE COURT:** All right. So during the course of the
19 entire get-together there, if you had to say, taking a regular
20 glass of wine being like a four-ounce serving of wine, normal
21 serving, how many total servings would you say Mr. Aksu might
22 have consumed throughout the three-hour period?

23 **THE WITNESS:** The flights themselves, okay, had a decent
24 amount of wine in each glass. They weren't --

25 **THE COURT:** I'm trying get a ballpark figure.

26 **THE WITNESS:** Yes, sir. I'd say that we did five of
27 those. That's fifteen glasses each.

28 **THE COURT:** So not in a technical, legal sense but in a

1 sort of laymen's sense, would you say that Mr. Aksu was under
2 the influence when he left the bar?

3 **THE WITNESS:** I I couldn't have that opinion. He
4 didn't appear to be under the influence to me. I know that I
5 felt very tipsy.

6 **THE COURT:** Had he drunk more or less than you?

7 **THE WITNESS:** The same amount.

8 **THE COURT:** He is a somewhat bigger guy than you?

9 **THE WITNESS:** Yes, he is.

10 **THE COURT:** All right. Go ahead.

11 **MR. TULLY:** Thank you.

12 **Q-** I'm still confused. So you said "a flight." That means
13 each person had the cute little tray in front of them?

14 **A.** Each person would have 3 glasses in front of them. I
15 don't know if it was on a tray or not.

16 **Q.** Okay. Thank you.

17 **THE COURT:** Yeah. But now you spoiled my perfectly nice
18 image. Go ahead, Mr. Tully.

19 **MR. TULLY:** **Q.** In terms of Mr. Butler's presentation to
20 you when you joined his firm, it seems like what he was doing
21 was legitimate?

22 **A.** Yes.

23 **Q-** Okay. And you were a former police officer?

24 **A.** Yes.

25 **Q.** So he fooled you for a time being?

26 **A.** Yes, he did.

27 **Q-** And it was only when this drug deal happened that you
28 really had your guard up?

1 A. There had been other flags. And even looking back now,
2 obviously I see a lot more that I didn't notice at the time.
3 But it wasn't until like probably the last six months that I
4 worked with him because I worked with him a lot more closely
5 at that point because that's when he did a TV show that was
6 coming in to film him and he wanted me to come in every day to
7 run his business for him. And that's when I got more of a true
8 sense of who he was.

9 Q. Okay. Well, how long did you stay with this firm before
10 you quit or left it?

11 A. I had to wait until the undercover drug operations were
12 done before I could leave.

13 Q- Okay.

14 A. The date that he was arrested was basically my last day
15 of employment.

16 THE COURT: About when was that?

17 THE WITNESS: It was March, somewhere around I think the
18 16th. I'm not positive.

19 MR. TULLY: Q. March of 2012?

20 A. Yes.

21 THE COURT: How could that be? We haven't gotten there
22 yet.

23 THE WITNESS: I'm sorry. It's 2011.

24 THE COURT: 2011.

25 MR. TULLY: Q. You stated on direct that you had been
26 brought into a drug deal?

27 A. Yes.

28 Q. Could you tell us about that. Were you actually involved

1 in the drug deal?

2 A. Yes, I was.

3 Q. Okay. And you went along with a drug deal at that time

4 because you were afraid or

5 A. Because I knew he had to be turned in.

6 Q. Okay.

7 A. I knew that the drugs were coming from the narcotics task

8 force commander.

9 Q. Okay. And so you stayed on at that point and

10 participated in the drug deal --

11 A. Let me back up.

12 Q. Yes.

13 A. The drug deal itself was Chris Butler giving me drugs. I

14 didn't sell them to anyone else except for the department of

15 justice. I gave them to them.

16 Q. Why did he give you drugs?

17 A. He misjudged me.

18 Q. Okay. So he was just handing you drugs?

19 A. He wanted me to sell them. Knowing that I live in San

20 Francisco, he assumed I knew a lot of people that smoke

21 marijuana; and thought that if they did, that I should present

22 that to see if any of my friends wanted to purchase marijuana.

23 Q. So he wanted you to sell marijuana?

24 A. Yes.

25 Q. And he was giving you marijuana that was stolen from the

26 evidence room for the --

27 A. That's a little more complicated. Some of it was; some

28 of it had come by other means. But basically, yes.

1 **THE COURT:** By the time you got something from -- or
2 through Mr. Butler for the first time, were you already on board
3 with the state attorney general? Is that what you're saying

4 **THE WITNESS:** No. Once --

5 **THE COURT:** Or did you have one or more transactions that
6 you were involved in before you actually made contact with the
7 state AG and sort of got on board with them?

8 **THE WITNESS:** That's a little bit complicated also. He
9 gave me the first pound of marijuana, and obviously it was a
10 long

11 **THE COURT:** Well, yeah. That's simply my question
12 though. When that event happened, were you already working for,
13 in a sense, working for a state AG or were you still in sort of
14 "I got to turn these guys in, but I got to take the marijuana
15 right now because that's another way for me to maintain my
16 credibility"?

17 **THE WITNESS:** Right. And I know I needed the evidence to
18 have when I did turn them in. And ultimately, because pressure
19 was being put on me by Norm Welsh through Chris Butler, I
20 purchased the first pound with my own money and of course he
21 gave me a second pound.

22 **THE COURT:** Right. So the first one you got though,
23 eventually that pound you turned into the state? You held onto
24 it and turned it in?

25 **THE WITNESS:** Yes. I turned in both pounds that I was
26 given.

27 **THE COURT:** All right. Go ahead.

28 **MR. TULLY:** Q. In terms of the DUI stop where Mr. Aksu

1 was stopped, do you know if the agreement between Mr. Butler and
2 the Danville police officer was that Mr. Aksu would be stopped
3 no matter what, or would the police officer have to have
4 probable cause prior to stopping Mr. Aksu?

5 **A.** It was my impression that he would be stopped either way.

6 **Q.** And --

7 **THE COURT:** Excuse me. Now, I've just had a second
8 thought here, and I just want to make sure that I'm not doing
9 something that I shouldn't be doing. Number one, you indicated
10 earlier that you had been given some form of immunity by the
11 state attorney general.

12 **THE WITNESS:** Yes, by the Department of Justice.

13 **THE COURT:** All right. Meaning the State Department of
14 Justice?

15 **THE WITNESS:** Yes.

16 **THE COURT:** Okay. You may or may not know whether or not
17 this sort of bigger investigation -- that may be much bigger
18 than your slice of it -- may also involve federal investigation
19 and prosecution.

20 **THE WITNESS:** Yes, I'm very aware.

21 **THE COURT:** Have you been promised and do you understand
22 that whatever you might say here today sort of falls under some
23 sort of federal promise you have been given that you won't be
24 prosecuted federally also?

25 **THE WITNESS:** I haven't specifically been given that
26 promise. But everything I am telling you today, I told to the
27 FBI last Friday.

28 **THE COURT:** So let me back up a step. Do you have a

1 lawyer representing you in connection with this matter?

2 **THE WITNESS:** I do not at this time.

3 **THE COURT:** All right. Do you understand that if you
4 talk about receiving marijuana under the circumstances that
5 you've mentioned before, or being involved in any sort of
6 behavior, that there's at least some possibility here that
7 you're saying something that might incriminate you?

8 **THE WITNESS:** Yes.

9 **MR. LANGLEY:** And you have the right not to answer any
10 questions if you choose not to answer questions about things
11 that might incriminate you.

12 **THE WITNESS:** I do understand. I am not going to say
13 anything I have not told the Department of Justice and the FBI
14 already.

15 **THE COURT:** So you've thought this through. Number
16 one you decided in connection with this proceeding that
17 you're not asking to have a lawyer here to represent you in
18 connection with your testimony, number one; and number two, your
19 willing to answer questions about it?

20 **THE WITNESS:** Yes.

21 **THE COURT:** Okay. Go ahead, Mr. Tully.

22 **MR. TULLY:** Thank you.

23 **Q-** Regarding when Ms. Porter had spoken with you after some
24 time had transpired, after the first meeting, and there's the
25 subject of an exchange at the police station

26 **A.** Yes.

27 **Q.** -- Ms. Porter brought up that "Hey, can't one of the
28 plans be that if he shows up to pick up the son and he's drunk,

1 that he is just arrested there for DUI"?

2 A. That was one of the plans that was put forth,

3 Q- yes.
In terms of the meeting that you had with Mr. Aksu at the
4 Vine bar in Danville, did you go through that meeting thinking
5 that anything illegal had transpired at that time?

6 MR. LANGLEY: Objection, irrelevant and calls for legal
7 conclusion.

8 THE COURT: Sustained. You know, I'm still struggling
9 with this one, Mr. Tully. So having had 40 years of experience
10 as a lawyer and a judge and not really having a full grasp on --
11 and also everything that I've done up until the last couple
12 years has been in that area of criminal law.

13 And I'm still sort of sorting through my mind as to
14 whether or not anything that was done on Mr. Marino's side of
15 this constitutes criminal behavior if a private investigator
16 does that. The private investigator who does it might be, as
17 was suggested in a previous question, subject to some Business
18 and Professions Code issues. But I'm not sure that you would
19 necessarily call it "criminal" activity. Either way though, his
20 opinion about it is irrelevant.

21 MR. TULLY: Q. You were a police officer for some time;
22 correct?

23 A. I was a deputy sheriff for almost 17 years.

24 Q. In law enforcement for 17 years?

25 A. Yes.

26 Q. At the time of this meeting, did you knowingly violate
27 any of the penal codes?

28 MR. LANGLEY: Objection.

1 **THE COURT:** Sustained. Same type of question.

2 **MR. TULLY:** Q. Okay. Did you ever promise Ms. Porter
3 that you would participate in anything illegal with regard to
4 Mr. Aksu?

5 **A.** No, I did not.

6 **MR. TULLY:** Thank you. Nothing further.

7 **THE COURT:** All right. Redirect.

8 **REDIRECT EXAMINATION**

9 **MR. LANGLEY:** Q. When you went to the initial meeting,
10 were you aware that Ms. Porter was subject to a temporary
11 restraining order at that time?

12 **A.** No, I was not.

13 **Q.** That was mentioned in the meeting?

14 **A.** No, it was not.

15 **Q-** Well, you met with Mr. Aksu --

16 **THE COURT:** When you said "the meeting," are you
17 referring to a meeting or are you referring to both meetings?

18 **MR. LANGLEY:** Q. The first meeting, was it ever brought
19 up, a TRO ever brought up?

20 **A.** I was never made aware in either meeting that there was a
21 restraining order of any type.

22 **Q.** Was there any discussion at all about what orders may be
23 in effect in their --

24 **MR. TULLY:** Objection, beyond the scope of cross.

25 **THE COURT:** Well first of all, rule number one is that as
26 a matter of courtesy you have to let him finish his question.

27 **MR. LANGLEY:** I'm sorry.

28 **THE COURT:** All right. So you want to start again,

1 Mr. Langley, and ask your entire question.

2 **MR. LANGLEY:** Q. At either of the meetings, was it ever
3 discussed what orders may be in effect with regard to their
4 divorce proceedings?

5 **A.** There was no discussion about the actual -- anything as
6 far as their divorce proceedings went.

7 **Q.** During the episode at the wine bar, do you recall
8 Mr. Aksu requesting that some food be ordered?

9 **A.** I believe there was food ordered, yes.

10 **Q.** And did he eat food too?

11 **A.** I believe food did come to the table, yes. I don't
12 remember exactly what type, but I do remember food being at the
13 table.

14 **Q-** Do you recall Mr. Aksu requesting that food be ordered?

15 **A.** I believe it was him that wanted it, yes.

16 **MR. LANGLEY:** Thank you. I have nothing further.

17 **THE COURT:** Anything else?

18 **MR. TULLY:** Nothing.

19 **THE COURT:** Thank you, sir. You're excused.

20 Are there any other witnesses or are we returning to
21 Mr. Aksu?

22 (End of proceedings.)

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State of California)
County of Contra Costa) ss.

I, Julie L. Ralston, hereby certify that I am a Certified Shorthand Reporter and that I recorded verbatim in shorthand the proceedings had Wednesday, December 13, 2011, in the matter of Arda Aksu, Petitioner, versus Suzanne Porter, Respondent, Case Number MSD 06-04997, completely and correctly to the best of my ability; that I have caused said shorthand to be transcribed into typewriting; and the foregoing pages, 1 to 32, constitute a complete and accurate transcript of said shorthand writing taken in the above-mentioned proceedings.

Dated at Oakland, California, this 23rd day of February, 2012.

JULIE L. RALSTON, CSR No. 13604

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